

Section II (Remarks)

A. Summary of Amendment to the Claims

By the present Amendment, claims 1, 6, 7, 47, 54 and 55 have been amended; claims 30, 32, 34-35, 37-42, and 60 have been cancelled; and new claims 62 and 63 have been added. Claims 3, 5, 8, 10-29, 31, 33, 36, 43-46, 56, and 59 were previously cancelled. No new matter within the meaning of 35 U.S.C. §132(a) has been introduced by the foregoing amendments.

The amendments made herein are fully consistent with and supported by the originally-filed disclosure of this application. Support for the amendments to claims 1, 47 and 54 is provided in the Specification as filed, at page 24, lines 2-7. Claims 6 and 7 have been amended to properly depend from newly added claim 62. Claim 55 has been amended in accordance with the amendments to claim 54 and is supported by claim 55, as originally filed.

Support for new claim 62 is found in original claim 5. Support for new claim 63 is provided in the Specification as filed, at page 24, lines 6-7.

In view of the finality of the March 25, 2010 Office Action and to ensure substantive consideration of this response, a Request for Continued Examination is concurrently submitted herewith, together with payment of the appertaining RCE fees (see *infra*, "CONCLUSION").

B. Claim Objection

In the Office Action mailed March 25, 2010, claims 1, 30, 47 and 61 were objected to as disclosing a "second" threshold before disclosing a "first" threshold. The examiner's attention is respectfully drawn to Section I above, where the claims no longer contain recitation of the first or second threshold. The objection is therefore moot.

C. Claim Rejection Under 35 U.S.C. §102

In the Office Action mailed March 25, 2010, claims 54, 55, 57 and 58 were rejected under 35 U.S.C. § 102 as unpatentable over U.S. Patent No. 6,072,396 (hereinafter "Gaukel et al."). Applicants respectfully disagree.

Anticipation of a claim requires the disclosure in a single prior art reference of each element of the claim under consideration. (Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).)

The examiner's attention is respectfully drawn to Section I above, where claim 54 has been amended to recite that each access station is adapted to "transmit the respective station identifier as a beacon" and where the "at least one physiological parameter measuring device is adapted to receive a transmitted station identifier of a cell in which the physiological parameter reading is obtained, adapted to associate the at least one physiological parameter with a respective measuring device identifier of the physiological measuring device by which, the received station identifier of the cell in which, and a time at which the physiological parameter reading is obtained, and adapted to transmit the physiological parameter reading and the device identifier along with the received station identifier to the control unit."

In applicants' claimed system, the locating is performed by transmission of a station identifier by an access station, receipt of the station identifier by the physiological parameter measuring device in addition to measuring a physiological parameter and the association of the station identifier, the physiological parameter and the time in which both were obtained, and the ability of the measuring device to transmit the associated data to the remote control device. In applicants' claimed system, the access station transmits the station identifier, the physiological parameter measuring device both receives the station identifier and transmits associated data and the remote control unit receives the associated data. Gaukel et al. fails to provide such a system.

It is the examiner's position that the disclosure of Gaukel et al. at col. 15, lines 16-39, col. 18, lines 15-49 and Figs. 10 and 11 is anticipatory of applicants' recited "plurality of access stations." The sections cited by the examiner provide descriptions of "cellular bags 30 and 130" as analogous to applicants' recited access stations. Gaukel et al. discloses that the remote unit worn on the individual may comprise a cellular bag 30 (see, for example, lines 13-20 in column 11 and FIG. 1 of Gaukel). The cellular bag 30 "receive[s] positioning signals from GPS [(global positioning system)] satellites 12a-d" through the GPS receiver 32 located in the cellular bag 30 (see Fig. 1; Fig. 3; col. 13, lines 53-61; col. 15, lines 18-25; emphasis added).

The examiner further alleges that the disclosure of Gaukel et al. at col. 5, lines 62-64 and col. 8, lines 36-55 is anticipatory of applicants' recited "physiological parameter measuring device."

The disclosure cited by the examiner provides descriptions of “...an apparatus capable of sensing and transmitting environmental data...” and “...the ID bracelet connects to a small processor module contained within the “cellular bag” which acts as the overall processor...” It can be seen from this description that the processing of the system of Gaukel et al. takes place within the processor of the cellular bag. The ID bracelet/wristband component does not receive information from the cellular bag, such as location information received from the GPS. The function of the ID bracelet/wristband component is to sense environmental data and transmit that data to a processor in the cellular bag.

By contrast, applicants’ recited access station requires that the access station of a cell send a station identifier, and that the physiological parameter measuring device receive such identifier, where the physiological parameter measuring device associates/processes a physiological parameter reading with the respective measuring device identifier, the received location identifier of the cell and the time at which the physiological parameter reading was obtained. Furthermore, the associated data is transmitted by the physiological parameter measuring device to the control unit, as recited in amended claim 54.

Claims 55, 57, and 58 depend from claim 54, and therefore are patentable for the same reasons advanced above in support of the patentability of claim 54.

Since Gaukel et al. does not describe a system for capturing and monitoring at least one physiological parameter and movement within an area of at least one person, as set forth in claims 54, 55, 57 and 58, Gaukel et al. does not anticipate the claimed invention. Accordingly, withdrawal of the rejection of claims 54, 55, 57 and 58 under 35 U.S.C. § 102(b) as being anticipated by Gaukel et al. is respectfully requested.

D. Claim Rejection Under 35 U.S.C. §103

In the Office Action mailed March 25, 2010, claims 1, 2, 4, 6, 7, 9, 30, 32, 34, 35, 37-42, 47-53, 60 and 61 were rejected under 35 U.S.C. §103 as unpatentable over Gaukel et al., in view of U.S. Patent Application Publication No. 2004/0073093 (hereinafter “Hatlestad et al.”) and further in view of U.S. Patent No. 6,102,856 (hereinafter “Groff et al.”) Applicants respectfully disagree.

Claims 30, 32, 34, 35, 37-42 and 60 have been cancelled by the present Response. Accordingly the rejection under 35 U.S.C. §103 is addressed herein as applicable to claims 1, 2, 4, 6, 7, 9, 47-53, and 61.

Independent claims 1 and 47 recite a method (claim 1) and system (claim 47) for capturing and monitoring at least one physiological parameter and movement within an area of at least one person. The examiner's attention is respectfully drawn to Section I above, where claim 1 has been amended to include a step reciting transmission of a respective location identifier as a beacon by each of the plurality of access stations and a step reciting reception by a respective device of each person, a transmitted location identifier of a cell in which the physiological parameter reading is obtained. Correspondingly, independent claim 47 has been amended to recite that the access station of a cell transmit the station identifier, and that the remote control unit receives such a station identifier.

As set forth above, Gaukel et al. fails to provide a system where the locating of the physiological parameter is performed by transmission from the access station to the physiological parameter measuring device, which processes/associates the data received from the access station and a measured physiological parameter. In the system of claim 47, the measuring device further transmits the associated data to a remote control unit. The cited secondary references Hatlestad et al. and Groff et al. fail to overcome the deficiencies of Gaukel et al.

Hatlestad et al. is cited by the examiner as “disclos[ing] a physiological monitoring and transmitting system that applies correction factors to the measured waveforms to compensate for the context in which the data is measured...”

Hatlestad et al. provide a method to detect the context that exists when measurements of physiological conditions of a patient are measured and/or when one or more modes of therapy are applied to the patient. In one example of Hatlestad et al., a measuring device 102 receives a transmitted signal 204 from an external device 202 so as to allow correlation of the physiological measurements with the context of lying down (see, for example, paragraph [0026] and FIG. 2 of Hatlestad et al.) The combination of Gaukel et al. and Hatlestad et al. fails to provide a method in which a physiological parameter measuring device processes/associates the data received from the access station and a measured physiological parameter, as is recited in Applicants' claim 1

and fails to provide a system comprising such an access station, physiological parameter measuring device, or remote control unit, as is recited in Applicants' claim 47.

Groff et al. is cited by the examiner as "teach[ing] setting data thresholds at one or more standard deviations from the normal data pattern..."

Groff et al. provide a system in which unit 10 routinely collects and stores data from sensors (14, 16, 18 and 20), which data are fed to a central processing unit 22 and transmitted by a transmitter 26 from unit 10 to central facility 28 (see, for example, lines 33-40 in column 3 and FIG. 1 of Groff). The combination of Gaukel et al., Hatlestad et al. and Groff et al. fails to provide a method in which a physiological parameter measuring device processes/associates the data received from the access station and a measured physiological parameter, as is recited in Applicants' claim 1 and fails to provide a system comprising such an access station, physiological parameter measuring device, or remote control unit, as is recited in Applicants' claim 47.

Gaukel et al. in view of Hatlestad et al. and Groff et al. fails to provide any derivative basis for the claimed invention and, additionally, there would have been no logical reason for one of skill in the art to combine such references. Accordingly, no basis of *prima facie* obviousness of the claimed invention is presented by such cited references.

Accordingly, the combination of Gaukel et al., Hatlestad et al. and Groff et al. fails to render the method of claim 1 or the system of claim 47 obvious. Claims 2, 4, 6, 7, 9, 48-53 and 61 depend directly or indirectly from claims 1 or 47 and are correspondingly distinguished over the art.¹

Based on the foregoing, Gaukel et al. in view of Hatlestad et al. and Groff et al. fails to provide any logical basis for the method or system recited in claims 1, 2, 4, 6, 7, 9, 47-53, and 61. Gaukel et al. in view of Hatlestad et al. and Groff et al. does not render the claimed invention obvious. Accordingly, withdrawal of the rejection of claims 1, 2, 4, 6, 7, 9, 47-53, and 61 under 35 U.S.C. § 103 (a) as being obvious over Gaukel et al. in view of Hatlestad et al. and Groff et al. is respectfully requested.

¹ If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). (MPEP §2143.03)

E. Fee Payable for Added Claims

By the present Amendment, 2 new dependent claims have been introduced. The total number of claims does not exceed the number of claims for which payment was previously made. No additional fees are therefore required with respect to the addition of new claims 62 and 63.

CONCLUSION

Based on the foregoing, all of applicants' pending claims 1, 2, 4, 6, 7, 9, 47-55, 57, 58, and 61-63 and in form and condition for allowance. The examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

The time for responding to the March 25, 2010 Office Action without extension was set at three months, or June 25, 2010. This Response is therefore timely and is accompanied by a Request for Continued Examination. Payment of the RCE fee of \$405.00 specified in 37 C.F.R. § 1.17(e), as applicable to small entity, is being made by on-line credit card authorization at the time of EFS submission of this Response. Should any additional fees be required or an overpayment of fees made, please debit or credit our Deposit Account No. 08-3284, as necessary.

If any issues require further resolution, the examiner is requested to contact the undersigned attorneys at (919) 419-9350 to discuss same.

Respectfully submitted,

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